

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
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NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **January 18, 2007**, at 10:00 a.m.
in the Costa Mesa City Council Chambers
77 Fair Drive, Costa Mesa, California 94626.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **January 18, 2007**, following the Public Meeting
in the Costa Mesa City Council Chambers
77 Fair Drive, Costa Mesa, California 94626.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **January 18, 2007**, following the Public Hearing
in the Costa Mesa City Council Chambers
77 Fair Drive, Costa Mesa, California 94626.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders; General Industry Safety Orders; and Ship Building, Ship Repairing, and Ship Breaking Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **January 18, 2007**.

1. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Chapter 4, Subchapter 4, Article 4
Sections 1529, 1532, 1532.1, and 1535
GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 107, Section 5144
Article 109, Sections 5190 and 5198
Article 110, Sections 5200, 5202, 5207, 5208, 5210, 5211, 5212, 5213, 5214,
5217, 5218, and 5220
**SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY
ORDERS**
Chapter 4, Subchapter 18, Article 4
Section 8358
Assigned Protection Factors for Respirators

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 98
Section 5001
Cranes and Other Hoisting Equipment—Signals

Descriptions of the proposed changes are as follows:

1. **TITLE 8:**
CONSTRUCTION SAFETY ORDERS
Chapter 4, Subchapter 4, Article 4
Sections 1529, 1532, 1532.1, and 1535
GENERAL INDUSTRY SAFETY ORDERS
Chapter 4, Subchapter 7, Article 107, Section 5144
Article 109, Sections 5190 and 5198
Article 110, Sections 5200, 5202, 5207, 5208, 5210, 5211, 5212, 5213, 5214,
5217, 5218, and 5220
**SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY
ORDERS**
Chapter 4, Subchapter 18, Article 4
Section 8358
Assigned Protection Factors for Respirators

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt standards at least as effective as federal standards addressing occupational safety and health issues.

On August 24, 2006, the U.S. Department of Labor, Occupational Safety and Health Administration (federal OSHA) promulgated standards addressing assigned protection factors for respirators in 29 Code of Federal Regulations, Parts 1910, 1915, and 1926. The Board is relying on the explanation of the provisions of the federal standards in Federal Register, Volume 71, No. 164, pages 50122-50192, August 24, 2006, as the justification for the Board's proposed rulemaking action. The Board proposes to adopt standards which are the same as the federal standards except for editorial and format differences.

In the final rule, federal OSHA has revised its existing Respiratory Protection Standard to add definitions and requirements for Assigned Protection Factors (APFs) and Maximum Use Concentrations; and, specify a set of APFs for each class of respirators. These APFs specify the highest multiple of a contaminant's permissible exposure limit at which an employee can use a respirator safely. The final rule supersedes most of the existing APFs specified in the substance specific standards and harmonize APFs for these substances with those for general respirator use.

Because the proposed standards are substantially the same as the final rule promulgated by federal OSHA, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard. However, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written and oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and, 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standards may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

COST ESTIMATES OF PROPOSED ACTION

Federal Register, Volume 71, No. 164, August 24, 2006, Preamble Section V, indicates that the cost to employers associated with implementing the amendments to 29 CFR Parts 1910, 1915, and 1926 are estimated to be \$4.4 million for all establishments nationally. California employers' share of this total estimated cost is assumed to reflect its 12 percent proportion of the U.S. population or approximately \$0.5 million.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no significant economic impact is anticipated. Federal Register, Volume 71, No. 164, August 24, 2006, Preamble Section V, indicates the average compliance costs for small entities are less than 0.005 percent of average revenues and less than 0.03 percent of average profits. In addition, the preamble to the final rule goes on to state that these costs are likely over estimated and do not include anticipated cost benefits. Thus, federal OSHA projects no significant impacts from the rule on small entities.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand

businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 98
Section 5001
Cranes and Other Hoisting Equipment—Signals

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking was initiated in response to a Division of Occupational Safety and Health (Division) Request for New or Change in Existing Safety Order (Form 9), dated February 9, 2006, to amend existing signaling standards for cranes and hoisting equipment. According to the Division, there is a potential hazard from conflicting operational radii of cranes and other boom-type equipment on construction worksites. Inadvertent contact between equipment can result in serious employee injury or fatality, substantial damage to jobsite equipment and endangering the general public. In addition, operators and other jobsite employees working under the swing radii of the equipment could be exposed to falling objects such as the hoisted loads, load lines, and various structural and operating components of the equipment, causing potentially serious injury or fatality.

Section 5001 prescribes requirements for qualified signal persons, signaling systems and methods, and posting of signaling system methods at the jobsite, but does not specifically address communication between the crane operator and signal persons when other cranes are present on the jobsite within the swing radii of the crane where accidental, catastrophic contact could occur.

Board staff notes that the American Society of Mechanical Engineers (ASME) B30.5-2000 standard for Mobile and Locomotive Cranes specifies in Section 5-3.3 Signals, that standard signals to the operator of the crane shall be used (i.e., hand signals) unless voice communication equipment such as telephone, radio or equivalent is used. The ASME B30.5 standard also requires that all signals be discernable or audible at all times and most importantly, no response by the operator shall be made unless all signals are clearly understood. The ASME B30.5 standard further underscores the importance of equipment operators receiving clear instruction before moving loads. Identical signaling provisions are contained in ASME tower crane standards.

The following amendments to Section 5001 are proposed:

Section 5001—Signals.

This section requires the use of a qualified signal person when the point of operation is not in full and direct view of the operator unless a signaling or control device is provided for the safe direction of the operator. It also addresses: 1) giving stop signals, 2) use of a uniform signal system, 3) use of hand signals, 4) care of systems other than manual (hand) signal systems, and 5) posting of legible charts which explain and depict the type of signaling system in use.

It is proposed to add a new subsection (f)(1) which would require the employer to ensure effective communication and notification to jobsite crane operators and signal persons of the presence of other cranes which are operating within the swing radii of each other.

The proposed subsection (f)(1) is consistent with pre-job planning which is already required by Construction Safety Orders, Section 1511(b) to the extent that all predictable safety hazards must be identified and safeguarded against prior to the start of work.

A new subsection (f)(2) is proposed that would apply whenever two-way radio communication is utilized as a means of communication and would require the employer to utilize a dedicated frequency. The effect of subsection (f)(2) would be to require employers who choose to use wireless radio frequency communication devices to satisfy the requirements of subsection (f)(1), to identify and have the crane operator and signal person tuned to a specific frequency for the duration of the operation. This would assure no interference or crosstalk that might render critical communication ineffective.

Employers electing to use two-way radios may need to apply for and acquire a Federal Communications Commission (FCC) frequency license granting a specific frequency to the employer. The cost of the licensing fee is approximately \$105 (good for 10 years).

COST ESTIMATES OF PROPOSED ACTION**Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action. The proposal permits the employer to select and implement a method of communication that will effectively notify crane operators and signal persons operating in each others swing radii of their presence to avoid catastrophic contact. Consistent with testimony from stakeholders at the June 20, 2006, advisory committee, this is consistent with existing industry practice. The use of two-way radio communication devices either wireless or hard wire systems is not mandatory, but if used they must be operated on a dedicated frequency to avoid radio-frequency interference that could render the communication ineffective. In some cases, employers who choose two-way radio communications may need to acquire an FCC license granting them use of a specific frequency. An FCC license costs \$105 and is good for 10 years.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. (See Cost or Savings to State Agencies).

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no significant economic impact is anticipated for two reasons: 1) the cost of purchasing radios is proportionally insignificant compared to overall project costs (See Cost or Savings to State Agencies), and 2) in accordance with existing construction protocols, stakeholders who may be affected by the proposal currently rely on radio communication on jobsites where boom type mobile equipment is operated and the hazard of inadvertent contact exists.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than January 12, 2007. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on January 18, 2007, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

JOHN D. MACLEOD, Chairman

TITLE 8

CONSTRUCTION SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 4, ARTICLE 4

SECTIONS 1529, 1532, 1532.1, AND 1535

GENERAL INDUSTRY SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 7, ARTICLE 107, SECTION 5144

ARTICLE 109, SECTIONS 5190 AND 5198

ARTICLE 110, SECTIONS 5200, 5202, 5207, 5208, 5210, 5211, 5212, 5213, 5214,

5217, 5218, AND 5220

**SHIP BUILDING, SHIP REPAIRING, AND SHIP BREAKING SAFETY
ORDERS**

CHAPTER 4, SUBCHAPTER 18, ARTICLE 4

SECTION 8358

ASSIGNED PROTECTION FACTORS FOR RESPIRATORS

TITLE 8

GENERAL INDUSTRY SAFETY ORDERS

CHAPTER 4, SUBCHAPTER 7, ARTICLE 98,

SECTION 5001

CRANES AND OTHER HOISTING EQUIPMENT—SIGNALS

NOTICE OF ADOPTION OF
REGULATIONS
INTO TITLE 8, CALIFORNIA CODE OF REGULATIONS
BY THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

After proceedings held in accordance with and pursuant to the authority vested in Sections 142, 142.3 and 142.4, of the Labor Code to implement, interpret, or make specific, the Occupational Safety and Health Standards Board, by a majority vote, adopted additions, revisions, or deletions to the California Code of Regulations as follows:

1. ~~Title 8, Chapter 4, Subchapter, Construction Safety Orders, Article 4, New Section 1532.2; Subchapter 7, Articles 107 and 110, Section 5155 and New Section 5206; Subchapter 18, Ship Building, Ship Repairing, and Ship Breaking Safety Orders, Article 4, New Section 8359, Hexavalent Chromium.~~

~~Heard at the July 20, 2006, Public Hearing; adopted on August 17, 2006; filed with the Secretary of State on September 19, 2006; and became effective on September 19, 2006.~~

2. ~~Title 8, Chapter 4, Subchapter 4, General Industry Safety Orders, Article 93, Section 4920, Boom-Type Mobile Cranes.~~

~~Heard at the June 15, 2006, Public Hearing; adopted on August 17, 2006; filed with the Secretary of State on September 25, 2006; and became effective on October 25, 2006.~~

A copy of these standards are available upon request from the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721.

If you have Internet access, visit the Occupational Safety and Health Standards Board by going to: <http://www.dir.ca.gov/oshsb> and follow the links to the Standards Board. This information is updated monthly. The Standards Board's e-mail address is: oshsb@dir.ca.gov.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Keith Umemoto, Executive Officer